



# California Fair Political Practices Commission

September 21, 1988

John R. Calhoun  
City Attorney  
City of Long Beach  
City Hall  
333 West Ocean Boulevard  
Long Beach, Calif. 90802

Re: Your Request for Advice  
Our File No. A-88-362

Dear Mr. Calhoun:

You have written requesting formal written advice to confirm telephone advice which Robert Leidigh of our office previously rendered to you regarding Long Beach City Councilmember Ray Grabinski.

## QUESTION

Is Councilmember Grabinski disqualified from participating in a decision to rezone his principal residence and other properties surrounding his residence from duplex zoning to single family zoning?

## CONCLUSION

Councilmember Grabinski is disqualified from participating in such a decision because it will have a reasonably foreseeable material financial effect upon his interest in real property which is distinguishable from the effect of the decision upon the public generally. Neighboring homeowners who are similarly affected are not sufficient in number to constitute a significant segment of the general public.

### FACTS

The facts as stated in your attached letter are incorporated herein by reference. They accurately state the facts which were presented to me in our several telephone conversations.

Succinctly, the facts are that a small portion of the City of Long Beach is proposed for down-zoning from the current zoning which would permit duplexes to one which would permit only single family dwellings. This would have the effect of restricting the allowable use of properties which are currently zoned for duplex, but which have only a single family home. Those properties within the area which already have duplexes would be permitted as an existing non-conforming use.

Councilmember Grabinski's principal residence is within the proposed rezone area. Approximately 2% of all single family dwelling units within the city will be similarly affected by the down-zone. These represent approximately 1% of all dwelling units within the city.

### ANALYSIS

The Political Reform Act (the "Act")<sup>1/</sup> requires that no public official shall make, participate in making, or use his official position to try to influence making a governmental decision in which he has a financial interest. (Section 87100.) An official has a financial interest in a decision if it will have a reasonably foreseeable material financial effect on real property in which the official has an interest of \$1,000 or more, which effect will be distinguishable from the decision's effect upon the public generally. (Section 87103(b).)

Councilmember Grabinski's interest in his principal residence is presumably worth at least \$1,000. A decision to down-zone that property will clearly have a material financial effect on the value of the property. (Regulation 18702(b)(2).) The only question is whether the effect on his property will be distinguishable from the effect on the public generally. (Section 87103.)

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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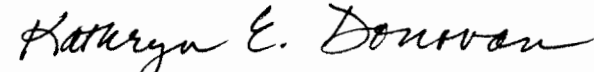
Regulation 18703 states that a decision's effect is distinguishable from the effect on the public generally unless it is substantially similar to the effect on a significant segment of the public. The Commission has never adopted a strict arithmetic guideline for determining what constitutes a significant segment of the general public. The Commission has, instead, adopted a case-by-case approach. (See In re Owen (1976) 2 FPPC Ops. 77; In re Ferraro (1978) 4 FPPC Ops. 62; In re Legan (1985) 9 FPPC Ops. 1, copies enclosed.)

Based upon a review of the facts which you have presented and the foregoing opinions, it is our conclusion that the segment of the population of Long Beach which will be affected in a substantially similar manner to Councilmember Grabinski is not sufficient in size to constitute a significant segment of the public. Consequently, he is required to disqualify himself.

I trust that this written confirmation is satisfactory. If you have any questions regarding this letter, you may contact this office at (916) 322-5901.

Sincerely

Diane M. Griffiths  
General Counsel



By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:ld:Calhoun

Enclosures

OFFICE OF THE  
**CITY ATTORNEY**

**JOHN R. CALHOUN**  
CITY ATTORNEY

**ROBERT E. SHANNON**  
ASSISTANT

OF

88 **LONG BEACH**

August 22, 1988

**MAIN OFFICE**  
City Hall  
333 West Ocean Boulevard  
Long Beach, California 90802  
(213) 590-6061

**HARBOR BRANCH OFFICE**  
Harbor Administration Building  
Post Office Box 570  
Long Beach, California 90801  
(213) 590-4120

**WORKERS' COMPENSATION SECTION**  
(213) 590-6583

Mr. Robert E. Leidigh  
Counsel, Legal Division  
California Fair Political  
Practices Commission  
428 J Street, Suite 800  
P. O. Box 807  
Sacramento, CA 95804-0807

Dear Mr. Leidigh:

It is respectfully requested that your office provide Long Beach City Councilmember Ray Grabinski with formal written advice confirming your telephone advice indicating that Mr. Grabinski is disqualified from making, participating in, or influencing the Long Beach City Council's decision concerning the rezoning matter described herein.

The subject under consideration by the Long Beach City Council is a proposal to rezone an already developed and built-up area consisting of approximately 320 acres, which is approximately one mile long by one-half mile wide, from R-2-N (duplexes) to R-1-N (single family dwellings). The existing zoning in the proposed rezoning study area is as follows: 2,592 of the parcels (96%) are presently zoned R-2 (duplexes); 70 of the parcels (3%) are presently zoned R-1 (single family); and 38 of the parcels (1%) are presently zoned for other uses (school, church, business). Notwithstanding the existing zoning, the actual present residential land use in the study area consists of 1,840 parcels (71%) which are now used for single family dwellings (a permitted use in a R-2 zone), and 752 parcels (29%) which are now used for duplexes.

The City's procedures require notification of the owners of all parcels within a proposed rezoning study area as well as the owners of parcels within 300 feet of such a study area. Approximately 2,700 parcels (2,592 owners) were given mailed notices of the subject proposed rezoning study.

The total land area of the City of Long Beach is approximately fifty square miles. The January 1987 Report of the Department of Finance of the State of California indicates there are 167,606 residential dwelling units in the City of Long Beach, including 77,801 R-1 (single family) dwelling units and 22,790 (R-2) (duplex) units.

Mr. Ray Grabinski serves on the Long Beach City Council as the elected representative from the 7th Councilmanic

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Counsel, Legal Division  
California Fair Political  
Practices Commission  
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District. The proposed rezoning study area is located entirely within the council district which Mr. Grabinski represents. He resides in a single family residence owned by him which is on a parcel presently zoned R-2-N located approximately in the center of the proposed rezoning study area.

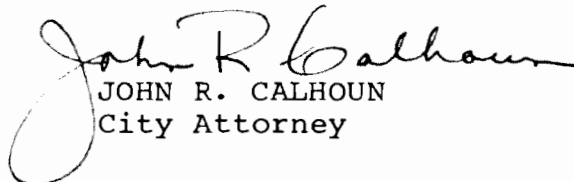
Furthermore, Mr. Grabinski owns a delicatessen/fast food restaurant business he operates in a building leased to him which is located approximately 450 feet from the outside boundary of the proposed rezoning study area. Of the parcels located inside the boundaries of the proposed rezoning study area within a 600 foot radius from Mr. Grabinski's place of business, 57 are presently used for single family dwelling units and the rest of said parcels are used for duplexes or businesses.

The facts pertaining to this matter and applicable laws and regulations of the Fair Political Practices Commission were discussed in several telephone conversations with your office during a one-week period commencing on or about August 5, 1988. On August 15, 1988 you advised our office by telephone that based upon your review and analysis of the situation as related to you in our telephone conversations, the Fair Political Practices Commission staff has determined that Mr. Grabinski is disqualified from making or participating in or influencing the City Council's decision concerning the proposed rezoning.

The same facts which were related to you during our telephone conversations have been set forth in this letter. Councilman Grabinski would appreciate receiving formal written advice confirming your telephone advice regarding his disqualification in this matter.

Thank you for your cooperation.

Very truly yours,

  
JOHN R. CALHOUN  
City Attorney

JRC:fl

cc: Ray Grabinski, Councilman - 7th District  
James C. Hankla, City Manager

88-362

OFFICE OF THE  
**CITY ATTORNEY**

**JOHN R. CALHOUN**  
CITY ATTORNEY

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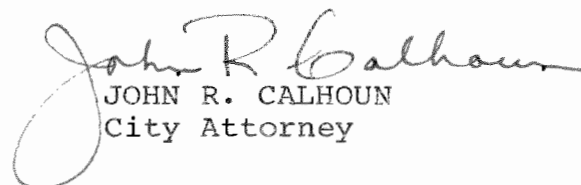
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